

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 03 ABUJA 000649

SIPDIS

STATE FOR EB/IPC:DRBEAN  
DEPT PLEASE PASS TO USTR: BURKY/ALVAREZ  
DOC FOR LASHLEY  
USPTO FOR URBAN  
LOC FOR TEPP

E.O. 12958: N/A  
TAGS: K1PR ETRD ECON EINV NI IPR  
SUBJECT: NIGERIA: 2002 SPECIAL 301 REVIEW ON IPR PROTECTION

REF: (A) STATE 12498 (B) STATE 3106 (C) 01 LAGOS 647

¶11. Mission provides response to ref A request for views on Nigeria,s compliance with TRIPS and recent trends in IPR protection.

¶12. Summary and Introduction: The Government of Nigeria (GON) appears to be making progress bringing its IPR legislation into compliance with TRIPS. Areas where an inadequate regulatory and legal framework exist are being targeted for action by the key GON agencies, although whether proposed enhanced IPR legislation will pass into law remains to be seen. Nevertheless, low cost piracy of optical media is commonplace due not only to lack of enforcement resources and trained enforcement staff, but also to inadequate public and government understanding and appreciation of the benefits of IPR protection. In addition, Nigeria,s low per capita income diminishes the likelihood of the successful introduction of the more costly licensed products, which fall outside the purchasing capability of most Nigerians.

¶13. Licensed software dealers, such as Microsoft Nigeria, are the primary catalysts for the recent upsurge in the procurement of these products among Nigeria,s financial institutions. Ironically, the GON, as the largest user of computers in the country, is also the largest consumer of non-licensed computer products. Reversing Nigeria,s weak enforcement culture will be a difficult, long-term effort. Because piracy is commonplace here, we must closely monitor Nigeria's progress. However, progress has been made. Continued positive engagement is preferable to adding Nigeria to the Watch List, and will likely produce better results.  
End Summary.

-----  
State of Intellectual Property Rights Regulation  
-----

¶14. Most of Nigeria,s IPR protective legislation complies with TRIPS. In 1999, amendments to the Nigerian Copyright Law incorporated most TRIPS protections for copyrights, except issues relating to Geographical Indications and the protection of Undisclosed Information. Four TRIPS-related bills and amendments are currently in various stages of legislative enactment. The World Intellectual Property Organization (WIPO) has reviewed the first three of the acts listed (all except the Breeders and Farmers Rights legislation) and, according to the GON, determined that their enactment would bring Nigeria into full compliance with TRIPS.

(a) A bill to establish an Intellectual Property Commission (IPCON), merging the Nigerian Copyrights Commission (NCC) and the Trademarks and Patents Registry, is now before the National Assembly. The draft law also provides for the new commission to retain a portion of the revenue accruing to it to fund operations and programs.

(b) An amendment to the Patents and Designs Act that will make comprehensive provisions for the registration and proprietorship of patents and designs is under review by the Ministry of Justice.

(c) An amendment to the Trademarks Act that will improve existing legislation relating to the recording, publishing, and enforcement of trademarks is also under review by the Ministry of Justice.

(d) Still in the drafting stage, a bill to provide for the protection of plant varieties, animal breeders, and farmers rights will ensure intellectual property rights protection for genetically engineered agricultural products.

-----  
Optical Media  
-----

15. Nigeria is a large market for a wide range of pirated optical media products. The GON has slowly begun to take measures to counter the problem. The Copyright Amendment Decree (1999) inserted a new section (18A) into the principal Copyright Act (1988) which provides the Nigerian Copyright Commission (NCC) additional anti-piracy powers. The NCC plans to prescribe the insertion of anti-piracy devices (e.g. holograms) to checkmate copyright abuses as well as identify real and pirated copies of sound recordings and cinematographic films intended for sale, rental, hiring, lending, or other public distribution. (Cinematographic films are interpreted to include music CDs, video CDs, CD-ROMs and DVDs.) The NCC expects to launch this program in March 2002 and reportedly has concluded arrangements with a company to provide hologram stamps.

16. Piracy of compact discs, video tapes, and other copyrighted products is rampant. To date, the GON has not taken strong action against the pirate industry preferring, for example, to attack videocassette rental shops rather than manufacturers of pirated videocassettes. Coordination among law enforcement authorities remains poor.

-----  
Computer Software  
-----

17. The GON categorizes software as literary work and provides copyright protection. Microsoft and the Business Software Alliance (BSA) have been instrumental in combating pirated software. To improve the regulator's ability to enforce its own laws, Microsoft Nigeria is providing the NCC training in computer literacy and the identification of pirated software. The company has also donated computers to the NCC to aid in the discharge of its duties.

18. Microsoft Nigeria launched a publicity campaign to explain the benefits of respecting IPR. Software development companies in Nigeria reportedly prefer that Source Identification Marks (SID) not be incorporated on their media. They opine that SID does not provide them enough economies of scale benefits from such an exercise.

19. During 2001, the Nigerian financial services sector aggressively shifted from being a user of pirated software to becoming generally compliant with the procurement of licensed products. Microsoft Nigeria estimates that 65 percent of Nigeria's banks are at various levels of compliance with procurement of licensed software. Just one year ago, only a few were compliant. This reversal is due, in part, to Microsoft Nigeria and other local software companies effectively promoting the long-term cost advantages and customer protection benefits of using licensed products. That Microsoft Nigeria continues to threaten noncompliant financial institutions with court action has also helped. The dramatic change in bank usage of licensed software is also due to increased competitiveness among Nigeria's banks in the campaign to obtain an edge in information technology. Many bankers now realize that pirated products often create more problems than solutions in their effort to improve customer service.

10. Other large-scale software consumers, particularly the insurance sector, discount houses, brokerage firms and accountants, have yet to follow the lead of the banks. Increased competition among these entities, and the continued legal campaign against users of non-licensed software may change this situation. Microsoft Nigeria claims they have achieved several out of court settlements leading to the use of licensed products.

-----  
IPR Enforcement  
-----

11. GON enforcement of IPR laws remains ineffective. Woeful

lack of funding (the total budget for NCC's IPR enforcement nationwide was only USD 43,000 in 2001), inadequate computerization to facilitate enforcement, and shortage of skilled manpower contribute to the weak enforcement effort. A key deficiency remains inadequate understanding and appreciation among regulatory officials, distributor networks, and consumers of the benefits from intellectual property rights protection.

¶12. NCC leadership admits they lack sufficient enforcement officers to cover the entire country. Some NCC offices are not staffed with prosecutors which prevents concluded investigations from going to trial. According to the NCC, the frequency of raids on manufacturers and distributors of pirated materials depends on the availability of funds and the lodging of complaints by rights holders. While over 150 IPR enforcement raids were allegedly carried out nationwide in 2001, their impact has been negligible.

¶13. While the extent of GON consumption of pirated software is unknown, the government itself is considered the most egregious abuser of IPR. Many, if not most government offices, utilize pirated software. To address IPR abuses within the GON, the NCC is forced to go through a protracted administrative process with the Ministry of Culture and Tourism, which oversees the NCC. Nevertheless, according to the NCC, discussions aimed at ensuring that all government agencies use appropriately licensed software are ongoing with individual GON agencies. The NCC is also pressing for the establishment of a single clearance office for bulk government purchases of licensed computer hardware and software. Additionally, the NCC claims it is unable to audit firms with connections to important political figures.

¶14. Most legal practitioners do not possess adequate knowledge of intellectual property rights law to address IPR properly in court, although a cadre of legal experts is developing. IPR cases are handled primarily by the Federal High Court and High Court judges generally enjoy broad familiarity with IPR protection law. However, at the Appellate Court level, a judge knowledgeable in IPR might not be handling the case, and misapplication of the law is not uncommon. Lagos is the only region in Nigeria where most judges have a reasonable knowledge of IPR. The USG's Commercial Law Development Program (CLDP) is working to educate Nigerian civil and judicial officials on IPR through educational seminars and training programs.

¶15. In addition to the judiciary, Nigeria's over-stretched and under-trained police force lacks understanding of IPR. Moreover, IPR protection is not a priority. It is unlikely that Nigeria's police force, without assertive political leadership, policy direction, and financial support from the GON, can deter producers and vendors of pirated materials from operating.

-----  
Comment  
-----

¶16. Although Nigeria is a large market for pirated goods, it should not be included on the Watch List. The Government is making considerable efforts to shore up its legal and regulatory framework. For a variety of reasons, enforcement remains poor but some steps have been taken. Given the many competing demands on the GON's resources, enforcement of IPR is a secondary priority. However, the GON has shown a demonstrable, although weakly financed, commitment to IPR. More importantly, government policies have opposed piracy not condoned it. Nigeria has much work to do but has some willing actors in both the public and private sector. Thus, our interests are better served in providing encouragement and positive reinforcement to these watch dogs and not placing Nigeria on the list of worst offenders.  
Jeter